



National Association of Independent Housing Professionals

601 Pennsylvania Ave. NW • South Building, Suite 900 • Washington, DC 20004

December 24, 2010

To: Board of Governors, the Federal Reserve Board

Fr: Ian Coates, Vice President

RE: Comments for Docket No. R-1394 and RIN No. AD-7100-56

Dear Board of Governors of the Federal Reserve System:

Please accept this letter as public comment to the interim final rules of appraisal independence, as outlined in the Dodd- Frank Act. The Act's intent to protect appraisers from pressure is a crucial task in light of recent systemic failures in the mortgage system. However, many of the "independence" provisions in section 1472 of the Dodd-Frank Act seem to "protect" appraisers by making them subjugate to the lenders they work for. The Act mirrors the Home Valuation Code of Conduct, and further attempts to address some of the unintended negative consequences of the HVCC.

It is recommended that the Board examine and compare how the numerous unintended consequences of the HVCC have weakened the appraisal profession, hurt the consumer, and given the large banks even more market share control. The HVCC was a failure, and flawed by design. It attempted to manipulate free-market forces for appraisal services while continuing to tolerate the lack of any real world enforcement of ethics and standards. As a result, an oligopolistic mortgage/appraisal system has materialized. The Fed should consider which rules will truly protect appraisal professionals and consumers, and which will further subjugate them to outside control and influences of large banks. Appraisers need the opportunity to be autonomous and reclaim their profession in order to protect the public (and lenders) from risks. As stated by appraisers repeatedly during the Boards' conference call regarding the Boards' Final Interim Rules, **enforcement** of rules and laws previous to HVCC would have been enough to prevent the current mortgage crisis. "**Enforcement**" is the key, and appraisers need to be autonomous to be independent!

As an example, the concept that a rules schema for "customary and reasonable" appraisal fees can be devised by anything other than natural free market forces is flawed. The HVCC skewed

Phone: 202.587.9300 • E-mail: info@naih.org • Website: www.naih.org

the market share for appraisal services towards the big banks and their AMCs when it banned loan originators from ordering appraisals and put that function into the hands of the lenders. Prices were affected when banks gained control of appraisers. We now have higher consumer costs for appraisals, increased failures of small appraisal businesses, increased valuation fraud, lower quality of appraisals, and other economic pitfalls that typically go with business consolidation. The “customary and reasonable” rules scheme is an attempt to correct a problem that the HVCC started when it caused the big banks to seize control of market share of appraisal services in the first place. On a practical level, it will be impossible to determine what would constitute a “normal” appraisal fee, since the industry is now controlled by the big banks. Also other changes to appraisals have occurred over the past 2 years that make it difficult to compare current services to past appraisal services. The Market Conditions form is a new reporting requirement that poses a significant amount of work in an appraisal. The new Good Faith Estimates have caused most lenders to “set” or “fix” the appraisal fees *they* allow appraisers to receive, so that they do not have to re-disclose to the consumers, if they misquote. The overall point is that appraiser fees should not be fixed under the guise of a “customary and reasonable” schema. Returning appraisers to the free market will correct a number of issues in the Frank-Dodd Act that were caused by HVCC. Appraisers should be permitted to do business with loan originators once again, and ethical rules and standards should (and must) be ***enforced*** to ensure compliance with ethical standards.

Eliminating loan originators from the appraisal ordering process has done nothing to curb fraud or pressure. The MARI Report and Interthinx Reports show that mortgage fraud is up significantly despite the prohibitions in the HVCC, and appraisal quality is down. The HVCC failed to reduce mortgage fraud. Valuation pressure has been moved from the front end of the transaction to the back, where lenders’ AVMs and “appraisal review processes” are being used as a pretext to get appraisers to change their report results. I assume that all loan officers know they are not supposed to tell the appraiser what number to hit – but it still happens frequently. Why? Lack of ***enforcement***. The appraiser needs a third party enforcement entity to report lenders to, and it must be mandatory, so fear of retaliation by the lender is negated.

The mandatory reporting of appraisers by lenders for USPAP violations is not unwarranted, but stands as a hollow provision, because lenders are not trained in USPAP and are therefore unqualified to judge compliance of USPAP. The mandatory reporting of ethics violations should flow in the opposite direction to achieve the desired effect of *reducing appraiser pressure*. Pressure has always been from the lender towards the appraiser, not the other way around. Appraisers need protection from influences of the lender, and should have a central enforcement agency that is in no way tied to any lender that is involved with mortgage transactions. A decree is worthless without ***enforcement***.

The biggest conflict of interest in the mortgage industry remains the bank owned AMC and/or staff appraiser who appraises for loans of their employer. Despite the “firewalls” established in the rules, the appraisers are always under pressure from the lending institution to perform in a way that allows the lender to close a large volume of loans for maximum profit. This principle of

volume/profit applies to the lending institution just as it applies to the individual mortgage originator. Please remember that the failed HVCC originated from an investigation of collusion between a bank and an AMC! Banks and other mortgage lenders should be prohibited from owning Appraisal Middleman Companies until a third party enforcement agency (with no ties or backing from banks) can be established.

Respectfully submitted,

Ian Coates, Vice President